

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiffs,

vs. Case No. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,

Defendants.

VIDEO DEPOSITION OF TIM BRACKEN
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 10, 2009, BEGINNING AT 1:03 P.M.
IN TULSA, OKLAHOMA

APPEARANCES

On behalf of the PLAINTIFFS:

Mr. Michael Womack
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161
mwomack@rigsabney.com

REPORTED BY: SUSAN K. MCGUIRE, CSR, RPR

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1 APPEARANCES CONTINUED:

2 On behalf of the DEFENDANT PETERSON FARMS, INC:

3 Mr. Craig Mirkes

McDANIEL, HIXON, LONGWELL & ACORD

4 320 South Boston, Suite 700

Tulsa, OK 74103

5 (918) 382-9200

cmirkes@mcdaniel-lawfirm.com

6 On behalf of the DEFENDANT GEORGE'S INC.

7 and GEORGE'S FARMS, INC.:

8 Mr. Earl Buddy Chadick

THE BASSETT LAW FIRM

9 221 North College Avenue

Fayetteville, AR 72702

10 (479) 521-9996

chadoaks194@yahoo.com

11 On behalf of the DEFENDANT CARGILL, INC.

12 and CARGILL TURKEY PRODUCTION:

13 Mr. Todd P. Walker

FAEGRE & BENSON

14 3200 Wells Fargo Center

1700 Lincoln Street

15 Denver, CO 80203

(303) 607-3600

16 twalker@faegre.com

17

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STIPULATIONS

It is stipulated that the deposition of TIM
BRACKEN may be taken on the 10th day of April, 2009,
pursuant to agreement and in accordance with the
Federal Rules of Civil Procedure before Susan K.
McGuire, CSR, RPR.

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1 VIDEOGRAPHER: This is Tape Number One of
2 the videotape deposition of Tim Bracken in the matter
3 of State of Oklahoma versus Tyson Foods, being heard
4 before the District Court for the Northern District of
5 Oklahoma, case filed 05-CV-00329-GFK-SAJ.

6 This deposition is being held at 100 West
7 Fifth Street in Tulsa, Oklahoma on April 10th, 2009,
8 at the time of 1:03 p.m.

9 My name is Gabriel Pack and I am the
10 videographer, the court reporter is Susan McGuire.

11 Counsel, will you please introduce
12 yourselves and affiliations and the witness will be
13 sworn.

14 MR. WALKER: Todd Walker, with Faegre and
15 Benson representing the Cargill defendants.

16 MR. MIRKES: Craig Mirkes with McDaniel,
17 Hixon, Longwell and Acord representing Peterson Farms.

18 MR. CHADICK: Buddy Chadick with the Bassett
19 law firm representing Georges.

20 MR. WOMACK: Michael Womack with the Riggs,
21 Abney law firm representing the State of Oklahoma.

22 VIDEOGRAPHER: The court reporter will now
23 swear in the witness.

24 * * * * *

25 WHEREUPON,

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TIM BRACKEN

after having been first duly sworn, deposes and says
in reply to the questions propounded as follows,
to-wit:

DIRECT EXAMINATION

BY MR. WALKER:

Q. Sergeant Bracken, I'm Todd Walker. I'm with
Faegre and Benson representing the Cargill defendants.
We met just a moment ago. Would you please state your
name for the record?

A. Yes it's Tim Bracken, B-R-A-C-K-E-N.

Q. I understand you are a Sergeant with the
Tulsa Police Department?

A. I am.

Q. Okay. Sergeant Bracken, have you been
deposed before?

A. Yes, I have.

Q. Many times?

A. Maybe three or four.

Q. Okay. How long ago was the most recent
deposition you've given?

A. Maybe three years ago, two or three years
ago. It was a wrongful death that I investigated as a
police officer.

Q. Perhaps as a matter of review and to refresh

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1 you on the process here, you are under oath today
2 although we're in an informal conference room, your
3 testimony, it needs to be the same as if you were
4 sitting in front of the Judge; okay?

5 A. Okay.

6 Q. I'm going to be asking you a series of
7 questions and eliciting your answers to those
8 questions. We have a court reporter sitting here
9 today taking down all the things that are said in the
10 room and one of the important things to get a good
11 record is to do the best we can not to talk at the
12 same time; okay?

13 A. Okay.

14 Q. So I will try and wait until you finish an
15 answer before I move on to my next question, and I
16 would just ask that you wait until I'm finished asking
17 a question before you begin to deliver your answer;
18 okay?

19 A. Okay.

20 Q. The other thing that's important for the
21 written record is to be sure that you give verbal
22 responses to my questions, rather than shakes of the
23 head or nods of the head, those kinds of things; okay?

24 A. Okay.

25 Q. And if at any time you don't understand a

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1 question that I've asked, I can ask some poor
2 questions sometimes, that don't make sense, and I'm
3 not trying to, but if I do that and you don't
4 understand a question, please let me know and I'll try
5 to rephrase it in a way that you do understand; okay?

6 A. Okay.

7 Q. But if you give me an answer to a question,
8 I'm going to assume that you understood it; okay?

9 A. Okay.

10 Q. If you need to take a break at any time
11 please just let me know. The only thing I ask is that
12 if there's a question pending, you give me your answer
13 before we take a break; all right?

14 A. Okay.

15 Q. What did you do to prepare for your
16 deposition today, if anything?

17 A. Nothing. We met with the State attorneys
18 last week for a very brief time and it was mainly just
19 to say, you know, you're going to be going to a
20 deposition, please have the certain paperwork that had
21 not been turned over. We really didn't review
22 testimony or anything at that meeting.

23 Q. Okay.

24 A. Just a brief meeting.

25 Q. Was Mr. Womack there, who's here in at the

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1 table?

2 A. No. No.

3 Q. Who of the State attorneys do you recall was
4 present at that meeting?

5 A. I'm sorry, I don't even know his name, but
6 one of the lead.

7 Q. Do you know, Mr. Rick Gerron?

8 A. Rick Gerron, that's it.

9 Q. Okay. Was he the only attorney that you
10 were aware of in the room?

11 A. Yes.

12 Q. Okay. Did he meet with you individually or
13 a group of people?

14 A. Group.

15 Q. Okay. And who do you recall was in that
16 meeting?

17 A. Steve Steele, Mike Huff, Mike Nance, Liz
18 Waverly.

19 Q. Weatherly?

20 A. Weatherly, and Danny Linchard.

21 Q. What specifically did Mr. Gerron tell you
22 that day?

23 A. Just that we would be being deposed over
24 here and to just, you know, tell the truth and tell
25 them what they need to know -- like I said we didn't

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1 go over any specifics at all and just the big thing he
2 wanted to make sure that we brought our 1099s because
3 you wouldn't have access to those.

4 Q. Did he impress upon you or make any
5 statements about your knowledge of environmental laws
6 or lack of knowledge of laws?

7 A. No.

8 Q. Did he show you any documents?

9 A. No.

10 Q. Did anybody else in that meeting show you
11 documents relating to this case?

12 A. No.

13 Q. I'm going to hand you what's been marked as
14 Exhibit 1 to your deposition. It's a Subpoena, do you
15 recognize that document?

16 A. Yes, this was the one that was served to me
17 in detective division.

18 Q. Did you notice in getting that Subpoena,
19 that it asked for you to bring with you to this
20 deposition any documents or electronic records that
21 you may have pertaining to your work on this case?

22 A. Yes.

23 Q. And did you bring any documents of that
24 nature?

25 A. I have no documents.

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1 Q. Okay. Did you bring a 1099, a copy of some
2 1099s?

3 A. Yes.

4 Q. Okay. And did those relate to your
5 compensation in this case?

6 A. Yes.

7 Q. Okay. And you have the copy that you
8 brought with you?

9 A. Yes.

10 Q. And before this deposition commenced, you
11 provided me with that so I could make some copies to
12 make as an exhibit. If we can mark that as number 7,
13 please. Well, 6.

14 The court reporter has marked and put before
15 you Exhibit 6. Can you tell me if that's a copy of
16 the document that you brought with you today.

17 A. It is.

18 Q. Okay. And I will represent to you and for
19 the record, that we have redacted your Social Security
20 information in the course of making those copies;
21 okay?

22 A. Yes.

23 Q. Okay. So that we can keep that information
24 private in the course of making this an exhibit to
25 your deposition; all right?

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1 A. Okay.

2 Q. You can keep the form that you brought with
3 you and then take that home.

4 How much were you paid for your work in 2005
5 by Lithochimeia?

6 A. \$2,058.

7 Q. And how much were you paid in 2006?

8 A. 1,316.

9 Q. And how much did Lithochimeia pay you in
10 2007?

11 A. 962.

12 Q. Does that correspond with your recollection
13 of having worked on this case in 2005, 2006, and 2007?

14 A. Yes.

15 Q. Did you work on this case in any way in
16 2008?

17 A. No.

18 Q. Or in 2004?

19 A. No.

20 Q. And how much were you paid roughly, on an
21 hourly basis for the work that you did?

22 A. I believe it was \$25 an hour.

23 Q. Okay. And did your rate of pay go up over
24 the course of time from 2005 to 2007?

25 A. No.

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1 Q. What were you tasked with doing in the
2 course of your work over those three years?

3 A. Basically, we were given a kit each time
4 we'd go out that would have a camera and a video
5 camera and we were required to just photograph and
6 video any evidence of spreading that may be going on
7 in a certain geographical area.

8 Q. Who gave you the camera and video camera
9 equipment?

10 A. The Lithochimeia.

11 Q. Who at Lithochimeia?

12 A. Oh, I don't remember.

13 Q. My understanding is that everybody else got
14 this equipment from Steve Steele. Did you get your
15 equipment from Steve Steele or from somebody at
16 Lithochimeia?

17 A. Oh, yeah. Okay. Yes. Yes. Steve, each
18 time we would meet he would give us that kit for that
19 day. Yes, that is correct.

20 Q. Okay. Did you also get forms for your use
21 to document the observations that you made each day?

22 A. Yes.

23 Q. Did you get -- did they issue you binoculars
24 or anything like that?

25 A. No, but we had, I think we had our own

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1 private.

2 Q. Might have brought your own?

3 A. Yeah.

4 Q. Did you bring your own?

5 A. No, I didn't have any, but usually somebody
6 that I was with would have binoculars.

7 Q. Were you working in teams?

8 A. Yes.

9 Q. Did you have a usual partner?

10 A. Yeah, usually it was either Darren Froemming
11 or Shane Tuell. In fact, I believe they're the only
12 two I worked with.

13 Q. Okay. Did they also, did Mr. Steele provide
14 you with any GPS equipment?

15 A. Yes.

16 Q. Were you ever given a laser range finder to
17 use to measure distances?

18 A. No.

19 Q. I'll represent to you that Mr. Steele
20 testified on Wednesday in his deposition that this
21 work kind of kicked off in about March of 2005, is
22 that about when you got involved in this project?

23 A. I would say so, yes.

24 Q. Do you remember going to an initial meeting
25 at the Lithochimeia offices for the purpose of some

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1 training and orientation?

2 A. Yes.

3 Q. Okay. And can you tell me who was at that
4 meeting that you can recall?

5 A. Not from Lithochimeia. I do know that Shane
6 Tuell was there, and Steve Steele was there, and I
7 believe at that time Danny Linchard may have been
8 there.

9 Q. Was Mr. Gerron there, Rick Gerron?

10 A. He may have been, I don't recall.

11 Q. You don't recall him saying anything at that
12 orientation meeting?

13 A. I don't remember who briefed us. I know we
14 met with them and they briefed us but I don't recall
15 who it was.

16 Q. Do you know who Burt Fisher is?

17 A. Yes.

18 Q. Who is Burt Fisher?

19 A. He also works I believe with Lithochimeia,
20 and I had some conversations with him, but I just
21 don't remember which one briefed us.

22 Q. Was Burt Fisher at that meeting?

23 A. I can't remember.

24 Q. When do you recall meeting with Burt Fisher?

25 A. I just remember him and his name. I don't

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1 remember exactly what.

2 Q. You may have encountered him a couple or a
3 few times?

4 A. Probably during the course of those three
5 years, yes.

6 Q. Okay. And you don't remember specifically
7 anything he was doing or saying in the course of those
8 encounters?

9 A. No, I can't remember what his job was.

10 Q. In the orientation and training meeting what
11 did they, what were they training you to do? What
12 were they -- what was the purpose?

13 A. Basically to go over the camera equipment
14 and of course, already trained in that from my other
15 job, I did crime scene for many, many years, and I
16 think that's probably one reason Steele asked me if I
17 wanted to do it, because it was about photography.

18 So we went over the digital camera system,
19 the video camera system, the GPS, you know, just how
20 to do a waypoint on it. So it was basically over the
21 equipment and how to use it.

22 Q. Did you personally then, in the course of
23 your work, use the camera that you were given?

24 A. Yes.

25 Q. And did you use the video camera that you

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1 were given?

2 A. Yes.

3 Q. Did you use the GPS equipment?

4 A. Yes.

5 Q. And did you use the forms that you were
6 given?

7 A. Yes.

8 Q. When you were doing your work out in the
9 field, were you usually the driver, never the driver,
10 how did that work?

11 A. I was never the driver. I never used my
12 car, my personal car.

13 Q. My understanding of how this worked then is
14 that the person who wasn't driving was typically
15 responsible for doing the writing and documenting on
16 the forms; is that correct?

17 A. Yeah. Most of the time.

18 Q. Did Lithochimeia or anybody for that matter,
19 ever give you any training specifically on how to use
20 the forms?

21 A. They wanted them filled out a specific way,
22 I believe, and they went over the form with us.

23 Q. Okay. Did you -- was there only one form
24 type that you used or were there more than one that
25 you used?

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1 A. If I remember correctly it was changed over
2 the course of the time that I was there. It was
3 modified a little bit, so there probably is two. I
4 don't recall the changes that were made.

5 Q. You said that your assignment in this case
6 was to go out and look for the land application of
7 litter, did I get that right?

8 A. Yes.

9 Q. Okay. Did you also engage in the task of
10 going out and identifying whether barns or facilities
11 were active or not?

12 A. Yes.

13 Q. And I, at least in my mind I've
14 distinguished those two types of tasks, did you
15 perceive those as different kinds of tasks in the
16 nature of the work that was being done?

17 A. Yes. If I recall, one of the first things
18 they had us go out and to actually waypoint the barns,
19 identify active barns and inactive barns. I think
20 that was one of my first assignments that I did.

21 Q. And then some time after that is when you
22 began documenting the litter hauling and litter
23 spreading kinds of activities?

24 A. That's correct.

25 Q. Did you use different forms to document

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1 those two different kinds of activities, you know?

2 A. We may have. I don't recall when the change
3 took place or what the difference of them.

4 Q. Okay. And I've got some examples of the
5 forms and maybe it will refresh your recollection on
6 that question. We can show those to you in a little
7 bit.

8 Can you tell me other than the two tasks
9 we've just talked about, the assessing the activity of
10 barns and the other task being looking for poultry
11 litter activity, did you perform any other tasks that
12 are not subsumed in those two tasks?

13 A. No, those were the two general tasks that we
14 were requested to do.

15 Q. Did you at any time accompany any sampling
16 teams to go observe sampling or drive people to
17 sampling locations?

18 A. I did in the last task that I performed and
19 I don't recall exact date was, as I was a photographer
20 for the sampling of Tenkiller Lake and Broken Bow, the
21 one down in Southeastern Oklahoma, and there will be
22 documents on that. And in those two, I was just
23 solely a photographer for those two samples.

24 Q. Other than the photography experience you
25 have with the Tulsa Police Department, do you have a

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1 photography hobby or business on the side?

2 A. I am. I'm a professional photographer
3 here in Tulsa.

4 Q. You are?

5 A. Yes, sir.

6 Q. So you have a business taking pictures?

7 A. Yes, it's called Tulsa Viewpoint.

8 Q. Okay. So you take pictures of people when
9 they come and do a sitting for you?

10 A. I don't do people, it's just architecture.
11 I do architecture type stuff, landmarks, and that kind
12 of stuff.

13 Q. That sounds interesting. What kind of
14 clients do you have? Do you have people who pay for
15 your pictures?

16 A. Yes. Yes. I have a website and I also have
17 a booth down at 81st and Harvard called The Market,
18 for those that know that, there's an actual studio
19 down there that I have and I sell the photos.

20 Q. Okay. Did you use your own photography
21 equipment or were you supplied with the photography
22 equipment when you went and did the photos of
23 Tenkiller and Broken Bow.

24 A. No, the Tenkiller and Broken Bow I used my
25 equipment because we were using a polarized filter and

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1 the regular camera didn't have that ability.

2 Q. What was the purpose of using a polarized --

3 A. Just for photography in the water, takes
4 some of the reflection out.

5 Q. What's the point of that?

6 A. It just takes -- when the sun reflects on
7 the water, you can't see anything in the water or
8 anything, and we were using the sucky disk, the little
9 disk that you put down in the water to determine the
10 depth where you can see it, so we would utilize that.

11 Q. Can you spell what that disk was called?

12 A. You know, I actually cannot.

13 Q. You called it a sucky disk?

14 A. I think they call it a sucky disk. Like I
15 said, I didn't have any training on that. I didn't
16 deal with that part of it. But I think they called it
17 a sucky disk.

18 Q. And so you were there with your camera
19 taking pictures of this sucky disk as they put it,
20 into the water to take some sort of depth
21 measurements?

22 A. Right.

23 Q. Did you do that at both Tenkiller and Broken
24 Bow?

25 A. Yes.

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1 Q. How many locations did you take depth
2 measurements when you were at Tenkiller?

3 A. It would be all documented. We did several
4 waypoints. It was a pretty full day. And that would
5 be documented somewhere.

6 Q. Were you preparing any documentation
7 relating to this work?

8 A. No.

9 Q. When you were done taking the pictures what
10 happened? Was this a digital camera?

11 A. Yes.

12 Q. And what did do you with the digital picture
13 files?

14 A. I gave them to Lithochimeia.

15 Q. Did you process them in any way before
16 giving them to Lithochimeia?

17 A. No.

18 Q. Did you hand them the chip?

19 A. Yes, the actual disc, yeah, the compact
20 disc.

21 Q. It's a compact disc that you put into this
22 camera?

23 A. Yes. Not a CD, compact disc.

24 Q. It's a memory?

25 A. Memory.

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1 Q. Device?

2 A. Yes. A memory card.

3 Q. Okay. A memory card and so you handed them
4 the memory card straight out of the camera?

5 A. Right.

6 Q. And then did they gave that back to you
7 later on or was it theirs?

8 A. No, they gave it back to me after they had
9 done what they needed to do with it.

10 Q. Did it come back empty?

11 A. Yes.

12 Q. Did you retain copies of these pictures in
13 any form?

14 A. No.

15 Q. Did you ever see copies of the pictures?

16 A. No, just viewing it on the back of the, you
17 know, when you take the picture, you view the back.
18 But, no, no pictures after that, after I handed them
19 over, no.

20 Q. What other things were you taking pictures
21 of when you went out to Tenkiller and Broken Bow?

22 A. They wanted me to photograph the actual
23 process that they were doing in filtering the water
24 and testing the water. So during the stages that they
25 were doing, I would photograph them doing the

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1 exercise.

2 Q. What task -- what kinds of things were you
3 capturing on film, on digital media?

4 A. They would filter, they'd take five gallon
5 buckets of water, they'd scoop up five gallon buckets
6 of water, I think it was five gallons, like I said,
7 this is all documented but, and then they'd pour it
8 through a filtering system and capture the, I assume
9 they're capturing particulate matter from the water.

10 So I would videotape them doing that. And
11 they had to run so much, and I don't remember, so much
12 water had to go through the filter system and all
13 that. So I would videotape that and then, or
14 photograph that, and then also just photograph the
15 actual use of the sucky disk.

16 Q. And you did say videotape a couple of times?
17 Were you videotaping?

18 A. No, I'm sorry if I said videotape. No, it
19 was all photography.

20 Q. You were taking still photos?

21 A. Still photos.

22 Q. And did you do this work at Tenkiller and
23 Broken Bow all in one day?

24 A. No, it was two separate days.

25 Q. Okay, so one day was spent at Tenkiller?

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1 A. Yes.

2 Q. And then a second day at Broken Bow?

3 A. Yes.

4 Q. Did you do Tenkiller first?

5 A. Yes.

6 Q. And that would have been in 2007, at the end
7 of your work?

8 A. Yeah. It was the last thing I did, so I'm
9 making that assumption that that's 2007, yes.

10 Q. And you were paid \$962 in 2007? Do you know
11 if the entire amount of that payment relates to the
12 photography work that you did?

13 A. No, I don't. I don't know how that was
14 broken down.

15 Q. Okay. Do you recall doing any other kinds
16 of work in 2007, besides the photo work at Tenkiller
17 and Broken Bow?

18 A. I don't know if we were still doing the
19 monitoring or not.

20 Q. Other than photographing the process of
21 filtering water that was captured in a five gallon
22 bucket, what other processes, activities, did you
23 photograph that day? Also setting aside the sucky
24 disk pictures, anything else?

25 A. We actually -- after they collected the jar

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1 of particulate matter, I would photograph the jar.

2 Q. Okay. I'm trying to understand what they
3 were doing here. And let me just -- I'm trying to
4 picture in my mind, you got people out there who have
5 a five gallon bucket and they scoop up roughly five
6 gallons of water; right?

7 A. Yes.

8 Q. And then they took that bucket and poured it
9 through, was it some sort of cloth material?

10 A. Yes.

11 Q. And then they were catching the water coming
12 out the other side of the cloth; right?

13 A. Yes.

14 Q. And I've actually had enough chemistry, I
15 know to call that, I think, the filtrate. So that's,
16 the water coming out, where was that going?

17 A. It would flow into a jar. There was jar at
18 the end of it.

19 Q. And then you would take a picture of -- how
20 big was the jar? Was it a five gallon jar?

21 A. No. No. No.

22 Q. Where is all the other water going?

23 A. It would flow through the filter system and
24 particulates would fall into the water of the jar and
25 then the rest would flow out, I think is how it works.

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1 Q. So they were -- was it your understanding
2 they were trying to get the particulate matter into
3 the jar in this process?

4 A. That's what I assume. I didn't have
5 anything to do with that as far as what they were
6 testing for.

7 Q. Did you either observe or take a picture of
8 and therefore, observe, the water in the bucket?

9 A. I think we took pictures of the -- you mean
10 before they dumped it through the filter system?

11 Q. Correct.

12 A. I believe we photographed some of that, too.
13 Yes.

14 Q. And then you took pictures and observed the
15 water in the jars?

16 A. Yes.

17 Q. Was the water in the jar cloudier, less
18 cloudy, how would you compare it to the water in the
19 bucket?

20 A. I couldn't recall that.

21 Q. Well, you there were taking pictures of it;
22 right?

23 A. That's correct.

24 Q. And so you had to be looking at it?

25 A. Right. Right.

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1 Q. And you just don't recall any differences?

2 A. Well, I don't recall comparisons. I never
3 did any comparison photos like that.

4 Q. Did anybody who was doing the work talk
5 about comparisons and what they were seeing in the
6 course of this process of filtering this water?

7 A. I don't recall that exact discussion. I
8 know they were going to do all kinds of analyses back
9 at their place.

10 Q. And I don't expect you to recall any exact
11 discussion from, you know, a couple years back.
12 Generally did the conversations that the samplers were
13 having while you were doing your photographic work,
14 enlighten you on what it was they were doing and
15 seeing and observing?

16 A. Yes, like I said, my impression was that
17 they were trying to capture the particulates into the
18 jar.

19 Q. Were you using your polarized filter on the
20 lens at all times during the photography that you were
21 doing?

22 A. No.

23 Q. Did you use it only when you were taking
24 photos into the lake itself?

25 A. That's correct.

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1 Q. But you didn't use it when you were taking
2 pictures of the jars and these other things?

3 A. No.

4 Q. Any reason why you wouldn't use the lens,
5 the filter, for the other kinds of pictures?

6 A. It's not needed for that purpose.

7 Q. I might have lost track of your answer,
8 because I'm pretty sure I asked you the question, I
9 just can't remember now. Other than the sucky disk
10 work that you were taking photos in the water and the
11 five gallon bucket work, including the pictures of the
12 jars, did you see any other activities that day?

13 A. No.

14 Q. And that day, being the day that you were at
15 Tenkiller; okay?

16 A. That's correct, yeah.

17 Q. Was the work that was done at Broken Bow
18 identical in terms of the procedures that they were
19 using and the types of pictures you were taking?

20 A. Yes.

21 Q. There were no additional tests that they
22 were doing that day?

23 A. No.

24 Q. Did you see samples being collected other
25 than by the filtration process?

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1 A. At Tenkiller -- well, I can't even remember
2 which lake it was, there was a diver.

3 Q. Do you recall there being a diver at only
4 one of the two lakes, not at both?

5 A. I never had direct contact with him
6 whatsoever, he was in a different boat and everything
7 else. I cannot recall if he was at both places or
8 not.

9 Q. You were doing your work from a boat?

10 A. Yes, from a pontoon.

11 Q. How many people were in the boat with you
12 when you were doing your photography work?

13 A. Well, it would be on the pictures, because I
14 photographed everybody. I photographed everybody that
15 was there. In fact, that was one thing they asked me
16 to do right off the bat, is to photograph each
17 individual person to identify them, so they could be
18 identified.

19 But I would say there was probably, I'm
20 trying to think about driving down there, we all went
21 down together. I think there was five of us total.

22 Q. You and four others?

23 A. Yeah.

24 Q. Was Burt Fisher with you?

25 A. Actually, I think he was with us on that

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1 one.

2 Q. There we go.

3 A. Yeah.

4 Q. A Burt Fisher sighting?

5 A. He was with us on that one. It's been a
6 long time.

7 Q. I understand. Do you recall what Burt
8 Fisher was talking about that day?

9 A. Not more specific.

10 Q. Did he say why they were collecting these
11 samples?

12 A. Oh, for water clarity.

13 Q. Did you see the samplers gather samples of
14 unfiltered material?

15 A. Yes.

16 Q. Straight out of the lake?

17 A. Yes. What do you call that, controlled
18 sample I think is what they were calling it, I don't
19 know. Yes, they would take a jar of lake water, too,
20 I believe, yeah.

21 Q. Would you take pictures of those?

22 A. I probably did, yeah.

23 Q. Did they ask you to take a picture of every
24 sample that was collected?

25 A. Yes.

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1 Q. And how did you document which picture went
2 with which sample?

3 A. We had a photo log that we kept, just like
4 doing with the chicken spreading, too, there was a log
5 and you identified the picture and what it showed.

6 Q. Okay. Did you keep that log?

7 A. No, somebody was usually a reporter, there
8 would be somebody -- and I would tell them, you know,
9 picture number whatever is this, picture number, and
10 someone would be recording those.

11 I don't think I actually ever filled out the
12 log, but I don't -- I may have filled out some. But I
13 do remember saying, you know, picture number 1 is
14 this, picture number 2 is this picture, and someone
15 was writing it down on the log.

16 Q. What's the make and model of the camera you
17 were using?

18 A. It was a Canon 30D DSLR and it had a.

19 Q. Digital single --

20 A. Yeah.

21 Q. What's DSLR, single lens reflect?

22 A. Yes. Single lens reflect, correct. And
23 that had a 24 to 105 lens on it.

24 Q. So that's a zoom lens?

25 A. Yes.

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1 Q. Goes, 24, what is it?

2 A. 24 millimeter to 105 millimeter.

3 Q. Did you use any other kind of lens that day?

4 A. No.

5 Q. You just applied a filter to it for some
6 pictures and took the filter off for others?

7 A. That's correct.

8 Q. Did you bring any other camera with you that
9 day?

10 A. No.

11 Q. You said that the diver was in a different
12 boat?

13 A. That's correct.

14 Q. Did you see that boat with the diver?

15 A. Yes.

16 Q. Did you see how many people were in that
17 boat?

18 A. It was just him.

19 Q. So he'd get out and do his dive and leave
20 the boat unattended?

21 A. That's correct.

22 Q. Did you take any pictures through the water
23 at the shore line?

24 A. Yes.

25 Q. So when they were using this sucky disk, did

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1 they take some of the pictures with the sucky disk by
2 the shore?

3 A. I don't -- no, I believe the sucky disk was
4 only used at each identified waypoint and then we
5 would drive to certain shorelines to show the shore
6 and clarity.

7 Q. And when you say each identified waypoint,
8 you mean out in the open water?

9 A. That's correct.

10 Q. But when you went to the shore, they didn't
11 use the sucky disk there?

12 A. I don't recall that they did.

13 Q. Did they direct you each time that you were
14 taking a picture to take the picture?

15 A. Yes.

16 Q. You weren't there just say, hey, I want to
17 get a shot of this, or a shot, a picture of that?

18 A. No. They would pretty much identify what
19 they wanted.

20 Q. How is it on your Canon camera that it tells
21 you which picture is which?

22 A. It has a file number.

23 Q. On the screen on the back of the camera?

24 A. That's correct.

25 Q. And my wife takes all the pictures in our

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1 family, so pardon me, but on a digital camera I do
2 know you've got a screen on the back and so when
3 you're shooting pictures with that Canon camera.
4 There's a number that displays on that screen for each
5 picture?

6 A. That's correct. It's called a metadata.

7 Q. You've used that camera for other purposes;
8 right, it's your camera?

9 A. That's correct.

10 Q. When you download the pictures from that
11 camera does it assign -- how does the file name or
12 designation get assigned for the pictures that come
13 off of your camera?

14 A. To my, like my personal computer?

15 Q. Yeah.

16 A. I use a program called Aperture and it just
17 numbers them.

18 Q. Does your program number them in its own way
19 or does it take the metadata that your camera
20 generates to create the picture identification?

21 A. That's correct.

22 Q. Well, I asked which one was it, which is it?

23 A. It reads both the number, it reads both the
24 number that the metadata says, but then it also
25 assigns it its own asset number in Apertures.

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1 Q. Okay. So when you go into your software can
2 you tell what the number was that the camera assigned
3 it?

4 A. Yes.

5 Q. Versus the number that your program assigned
6 it?

7 A. Yes.

8 Q. Do you have any knowledge of the process
9 that Lithochimeia used to download those pictures from
10 your disk?

11 A. No.

12 Q. Did they ask you to assist them with that?

13 A. No.

14 Q. Did they ever ask you to verify the accuracy
15 of their download of those pictures?

16 A. No.

17 Q. Did they ever ask you to verify the accuracy
18 of the log that they were maintaining of your
19 pictures?

20 A. No.

21 Q. When you were seeing these activities and
22 taking photos of samples, did you find any of those
23 samples to be remarkable in any particular way?

24 A. No.

25 Q. Did anybody who was collecting those samples

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1 comment about anything remarkable about the nature of
2 the samples they collected that day?

3 A. The only thing that I noticed that was
4 interesting was in Tenkiller where the water flowed
5 in, where the river, that part of Tenkiller, up at
6 that end when we did the sucky disk you couldn't see
7 it after about two feet. But when you got down at the
8 far end of Tenkiller, it would go to six or eight
9 feet, I think as far as eight feet. And I just found
10 that interesting, as far as the difference in clarity
11 between two ends of the lake.

12 Q. So it was less clear at the inflow point
13 where the river, where the Illinois River dumps into
14 Tenkiller?

15 A. That's correct.

16 Q. Are you a fisherman?

17 A. No.

18 Q. What time of year were you there, was it in
19 the spring?

20 A. It may have been, it's in the log. I
21 remember both days were really nice, which is unusual,
22 not windy, it was nice. They were very nice days but
23 I don't remember the exact time.

24 Q. Did you have an opportunity to see the river
25 water flowing into the lake?

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1 A. No.

2 Q. When you said you went down to the far end
3 of the lake, did you go to the dam, or were you
4 somewhere else?

5 A. No, the dam.

6 Q. And that's where you saw that you could --
7 your recollection is you could see about ten feet down
8 or something like that?

9 A. It was probably six to eight. And like I
10 said, it's logged, but you could see different depth.

11 Q. Did anybody tell you what the diver was up
12 to, what he was doing that day, other than just
13 diving?

14 A. I believe he was photographing with an
15 underwater camera or something, but like I said, I
16 never had any contact with him on the lake or
17 anything.

18 Q. Ever see the diver swimming below your boat?

19 A. No.

20 Q. Anybody ever comment about the diver being
21 around your boat?

22 A. No.

23 Q. Did the diver's boat follow you around or
24 was he on his kind of his own navigation and
25 direction?

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1 A. No, he pretty much would follow us around.

2 Q. When you went to the shore, did the diver go
3 to the shore?

4 A. He may have gone to the shore, but I don't
5 remember him getting out in the water. He may have
6 followed us over there but I don't remember him
7 getting in the water near the shore.

8 Q. When you would park at a waypoint out in the
9 open water, the diver's boat would be nearby?

10 A. It would be nearby, yes.

11 Q. How far away?

12 A. Maybe 30, 40 yards at least, he never got
13 real close to us.

14 Q. And then he'd park his boat there; right?

15 A. Uh-huh.

16 Q. And in every instance did he get out of his
17 boat and begin diving at each waypoint you went to?

18 A. I believe so.

19 Q. Did you take any pictures of the diver?

20 A. I probably did.

21 Q. At Lithochimeia's direction or just happen
22 to take one?

23 A. Yeah. I think when I did -- when I did each
24 individual to show that they were there, I probably
25 shot across to him, too. I think I got a couple, but

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1 not all the time, I didn't take it at each waypoint or
2 anything like that.

3 Q. Okay. And so you'd stop at a waypoint, the
4 crew on your boat would begin doing their sampling
5 activities; right?

6 A. That's correct.

7 Q. And you'd take photos of their sampling
8 activities; right?

9 A. That's correct.

10 Q. And at that time the diver would get off of
11 his boat and begin doing his dive; right?

12 A. That's correct.

13 Q. And in every instance did he go and then do
14 his dive while you were doing your sampling?

15 A. I can't say every instance.

16 Q. Weren't necessarily paying attention to
17 that?

18 A. That's correct.

19 Q. When you were done with your sampling did
20 you ever have to wait for the diver to surface and get
21 back in his boat before you moved on to the next
22 place?

23 A. I don't remember waiting for him.

24 Q. Are you just making it sound like -- it
25 sounds to me like you were traveling around the lake

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1 to these waypoints together; right?

2 A. That's correct.

3 Q. And it just seems reasonable that if you
4 were doing that, you know, somebody's work is going to
5 take longer than the others and I just wondered if you
6 were sure to wait before moving on to the next point
7 or maybe he had to wait. You don't remember that kind
8 of coordinated activity between the two boats?

9 A. Yeah. I don't.

10 Q. We talked about the crews using the sucky
11 disk device and you taking pictures of that, about
12 them pulling out five gallon bucket fulls of water and
13 filtering them and you taking pictures of what was
14 collected in the jars.

15 We talked about them perhaps grabbing
16 samples, control samples you called them, straight
17 from the lake and you taking pictures of those jars.

18 And we talked about at least at one of the
19 lakes where there was a diver and we talked about you
20 taking pictures of the water on the shore at some
21 location; right?

22 A. Yes.

23 Q. Any other activities that you saw being
24 conducted that day, whether you photographed them or
25 not?

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1 A. Not that I recall.

2 Q. Can you tell me your education beginning
3 with high school?

4 A. I graduated from Putnam City North High
5 School in Oklahoma City. Went right to Oklahoma State
6 University, graduated with a marketing degree from
7 Oklahoma State University. Never used the degree.

8 Immediately started the academy in, I
9 graduated in May and started the police academy in
10 August.

11 Q. In 1973?

12 A. No, in 1985.

13 Q. I lost track of things here. I'm sorry. So
14 you graduated with your marketing degree, when?

15 A. In 1985.

16 Q. '85. And then you went straight from there
17 to the police academy?

18 A. Yes.

19 Q. And you graduated from the police academy,
20 when?

21 A. At that time it was 24 weeks, so however
22 long, I don't remember the exact time, but it was 24
23 weeks after. I started August 5th, and then 24 weeks
24 later graduated from the police academy.

25 Q. Okay. So late '85 or early '86?

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1 A. Right.

2 Q. And then did you begin working at that time
3 for the Tulsa Police Department?

4 A. I did. I started in patrol, north side, did
5 that for about five years. Went into detective
6 division as a detective doing the job that I do now as
7 a supervisor, and that is, at that time it wasn't
8 called major crimes unit, we were basically crime
9 scene investigative guys.

10 Did that for about five years, promoted to
11 Sergeant, and that's when you're sent back to the
12 field. Did Sergeant for the field for probably three
13 years or so, I'm sorry, promoted to Corporal, then to
14 Sergeant. And it was pretty fast. It was just over a
15 year.

16 Q. Did they make you leave the detective
17 division when you were promoted to Corporal?

18 A. Yeah. And then became Sergeant, did patrol
19 Sergeant for a while until I was, came back into
20 detective division to supervise a squad I had left.

21 Q. What year did you come back into the
22 detective division?

23 A. I've been in there now for eight years as a
24 supervisor over the major crimes unit, third shift.
25 I've done a total of about 13 years of crime scene and

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1 homicide investigations.

2 Q. So your investigative experience is not
3 limited to just homicides; right?

4 A. Right. The crime scene investigation, the
5 reason they call us the major crimes unit, is we
6 investigate all major crimes, not just homicides.

7 Q. What are examples, what are the major
8 crimes? I'm just kind of curious.

9 A. It's, we investigate of course, rape scenes,
10 shooting with intent to kill, assaults with a deadly
11 weapon, and major burglaries, where there's a major
12 loss or there's something big about it.

13 So we do those, too, along with just regular
14 death investigation, which would could be just
15 anything from a natural DOA to a suicide.

16 Although my shift doesn't do it very often,
17 we do, responsible for commercial, if someone gets
18 killed commercially, like the Cintas with the heating
19 unit, we went out. We'd go out on something like
20 that.

21 Q. And over the course of the five years that
22 you were with the detective division early on and then
23 the eight years now that you've been back, have you
24 had the opportunity to actually conduct the
25 investigations yourself?

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1 A. Yes.

2 Q. And the opportunity to gather evidence at
3 crime scenes?

4 A. Yes.

5 Q. The opportunity to interview witnesses
6 regarding possible offenses?

7 A. Yes.

8 Q. Fair to say as a detective that's what you
9 need to do to prosecute somebody of an offense?

10 A. Yes.

11 Q. You need to gather the evidence?

12 A. Yes.

13 Q. And gathering the evidence entails going to
14 the location where the offense is reported to have
15 occurred; right?

16 A. Yes.

17 Q. And you need to make observations and one of
18 the ways to do that is to take photos; right?

19 A. Yes.

20 Q. But in the course of your work, you do more
21 than just take photos with the police department;
22 right?

23 A. Yes.

24 Q. You gather physical evidence at the scene;
25 correct?

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1 A. Yes.

2 Q. And that may be a variety of kinds of
3 physical evidence depending on the crime; right?

4 A. Yes.

5 Q. You agree with me that it's important to
6 understand what the alleged crime or offense is in
7 order to gather the appropriate evidence to prosecute
8 that crime?

9 A. Yes.

10 Q. In this case you weren't permitted to go on
11 to any private property, were you?

12 A. That's correct.

13 Q. You were limited to making whatever
14 observations you could from the public roadways;
15 correct?

16 A. That's correct.

17 Q. So you couldn't go on to any pieces of
18 property to gather any physical evidence, could you?

19 A. That's correct.

20 Q. You were specifically told not to do that;
21 correct?

22 A. That's correct.

23 Q. You were also specifically instructed not to
24 talk with any property owners or people who are
25 working on the properties that you were observing;

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1 correct?

2 A. That's correct.

3 Q. So you didn't interview anybody in the
4 course of your assignment for the State in this case;
5 right?

6 A. That's correct.

7 Q. You agree with me, that the kind of
8 investigation that you did for the State in this case
9 is very different from the kind of investigation that
10 you do for the Tulsa Police Department?

11 A. Yes, I was one part of the, I was one piece
12 of the investigation.

13 Q. One piece. Are you aware of anybody else
14 going on to the properties to gather the physical
15 evidence relating to the observations that you were
16 making?

17 A. No.

18 Q. So you don't know if any of those other
19 pieces exist, or not, of evidence?

20 A. That's correct.

21 Q. Were you told in any way what possible
22 offenses might be occurring with regard to the
23 operation of these farms and fields that you were out
24 there to observe?

25 A. No.

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1 Q. So you were unaware of whatever offenses may
2 be in the context of gathering the photographic and
3 documentary evidence that you did in this case; right?

4 A. That's correct.

5 Q. And that also is unlike the work you do for
6 the police force where you know what evidence to go
7 gather because you know the offense that you're
8 targeting; right?

9 A. Yes.

10 Q. That's true, isn't it?

11 A. Yeah, but just an example, we may go out to
12 a DOA that we don't know if it's a crime or not.

13 Q. Right.

14 A. We document with pictures and then the
15 medical examiner -- at that time we won't know until a
16 medical examiner, if there's been a crime committed or
17 not.

18 Q. Right.

19 A. So, you know, I will document it accordingly
20 and then they'll tell us if there's a crime committed.

21 Q. But you'll at least get the body, won't you?

22 A. Yeah. Yeah.

23 Q. You do more than take pictures in that case,
24 too, don't you?

25 A. That's correct.

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1 Q. And in fact, if you have, you know, probable
2 cause or whatever it is that that is required of you
3 to gain access to a piece of property, you'll go get a
4 warrant to access property so you can conduct your
5 investigation; correct?

6 A. That is correct.

7 Q. And in fact, you don't necessarily need a
8 warrant if you're given permission to go on to a piece
9 of property; right?

10 A. That is correct.

11 Q. In this case you didn't obtain any warrants
12 to go look at any property for the purpose of
13 gathering evidence or making any observations, did
14 you?

15 A. No.

16 Q. And you didn't seek permission from anybody
17 to access their land to get a closer look at what was
18 going on, did you?

19 A. That's correct.

20 Q. You were specifically told not to talk with
21 people to get permission; right?

22 A. That's correct.

23 Q. In the course of your education, college
24 education, police education, did you learn anything
25 about the environmental sciences?

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1 A. No.

2 Q. Did you learn anything through education
3 about the agricultural business?

4 A. No.

5 Q. Have you ever lived on a farm?

6 A. No.

7 Q. How about a ranch?

8 A. No.

9 Q. Have you always lived in the city basically?

10 A. Yes.

11 Q. Do you have any particular knowledge about
12 distinguishing types of grasses?

13 A. No.

14 Q. Do you have any particular knowledge about
15 the appearance of grasses based on seasonal
16 variations?

17 A. No.

18 Q. Do you have any particular knowledge about
19 the use and application of fertilizer?

20 A. No.

21 Q. In the course of your investigation did you
22 see occasions where material was being spread from the
23 back of a truck on a field?

24 A. Yes.

25 Q. And was it your understanding that the

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1 material that was being spread from the back of a
2 truck was poultry litter?

3 A. Yes.

4 Q. And how did you get the understanding that
5 it was poultry litter from your vantage point on a
6 roadside, and I'm not saying it wasn't, I'm just
7 saying, how would you know that?

8 A. Well, would just be able to identify the
9 truck as being a poultry spreader. We were given a
10 picture of what one would look like, but whether it
11 was poultry litter or not since I didn't get on the
12 property I couldn't tell you that. I'm just observing
13 what I observed.

14 Q. Okay. So you didn't go collect any samples
15 of what had been in any truck that you saw spreading;
16 correct?

17 A. That's correct.

18 Q. Are you familiar with the term agronomic
19 rate?

20 A. No.

21 Q. Did you do anything to calculate the rate of
22 application of any material that you saw being spread?

23 A. No.

24 Q. My understanding from deposing Major Steele
25 the other day is that the crews only went out in good

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1 weather and did not go out and do their work in the
2 rain, is that what you recall?

3 A. Yeah, I never worked in the rain.

4 Q. So you didn't have an opportunity or you
5 never saw any runoff coming, of water coming from any
6 field, did you?

7 A. No.

8 Q. You've never collected any water samples of
9 any sort, did you?

10 A. No.

11 Q. Did you ever take any measurements of the
12 distance between where any litter application was
13 occurring to any water body?

14 A. No.

15 Q. When you were getting prepared for your work
16 you testified that you had a training meeting; right?

17 A. Yes.

18 Q. And you had periodic interaction perhaps
19 with Mr. Fisher along the way; right?

20 A. Yes.

21 Q. Nothing specific and nothing long, enduring
22 other than perhaps I guess your testimony about the
23 sampling on the two lakes; right?

24 A. Right.

25 Q. Over the course of your training and through

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1 the time that you were working on this investigation
2 project, did anybody ever tell you that poultry litter
3 is a hazardous waste?

4 A. No.

5 Q. Did anybody ever tell you that your health
6 could be threatened in the course of doing the work
7 that you were doing?

8 A. No.

9 Q. Did anybody ever tell you that you could be
10 exposed to harmful bacteria in the course of your
11 work?

12 A. No.

13 Q. Did the State of Oklahoma, or Mr. Gerron, or
14 Mr. Fisher ever provide you with any personal
15 protective equipment to do your work?

16 A. No.

17 Q. So you didn't get any Tyvek coveralls, or
18 gloves, or booties, or respirator, or anything like
19 that?

20 A. No.

21 Q. I may have already asked it, but in the
22 course of gathering the information for any given day
23 at the end of the day, did you meet up with Major
24 Steele and provide him with your camera, videos,
25 documents, all those materials from your day's work?

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1 A. Yes.

2 Q. And you did that each day; right?

3 A. Yes.

4 Q. And then at the beginning of the next day's,
5 whatever the next day was, the next day's assignment
6 of work you would get a camera, video, all that
7 equipment and logbooks, and you'd go out and do your
8 work that day; right?

9 A. Yes.

10 Q. And then you'd finish and you'd give it
11 back?

12 A. That's correct.

13 Q. So you didn't retain any information which
14 is why you only had a 1099 form from this case to
15 bring in response to your Subpoena; right?

16 A. That's correct.

17 Q. And nobody ever asked you to destroy any
18 information, did they?

19 A. No.

20 Q. Did you ever destroy any information?

21 A. No.

22 Q. When you were taking pictures, did you ever
23 delete any of the pictures in the course of the, oh, I
24 don't like that shot, that's a bad shot, anything like
25 that?

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1 A. No.

2 Q. You kept every single picture that you took
3 in the lake photography; right?

4 A. Yes.

5 Q. And you gave every picture then to
6 Lithochimeia?

7 A. Yes.

8 Q. Do you know what the Illinois River
9 watershed is?

10 A. That's the geographical area that we were
11 responsible with, you know, patrolling, driving
12 around.

13 Q. Do you know where the boundaries of the
14 watershed are?

15 A. There was a map that we had kind of as
16 guidance, but I couldn't tell you an exact.

17 Q. Okay. When you were making observations,
18 did you do anything to verify whether you were inside
19 the watershed or not?

20 A. Well we had, we always had the map for
21 comparison and we would use that as our guide.

22 Q. Did the map have the boundaries of the
23 watershed drawn on it?

24 A. Yes.

25 Q. Along with having the boundaries of the

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1 watershed drawn on it, did it have the roads or was it
2 a topographical or aerial map?

3 A. It was, I believe it was an aerial map so it
4 would have had the roads. It had to have the roads
5 because that's how we knew where to go and get around,
6 so I believe it was an aerial map.

7 Q. Right. And then obviously if, you know,
8 somebody took an aerial photo, they don't capture the
9 drawing of the outline of the border on the ground
10 because it's not drawn on the ground; right?

11 A. That's correct.

12 Q. So somebody had to draw that on that map for
13 you; right?

14 A. That's correct.

15 Q. You didn't draw it yourself?

16 A. No.

17 Q. Are you aware that Burt Fisher issued a
18 report stating his opinions in this case?

19 A. No.

20 Q. Were you aware that your work was intended
21 to support Mr. Fisher's work?

22 A. Yes.

23 Q. Did Mr. Fisher ever give you an opportunity
24 to review his report in this case?

25 A. No.

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1 Q. So he never gave you an opportunity to
2 review the, or the conclusions that he reached and
3 attributed to the investigative work in this case?

4 A. That's correct.

5 Q. And I think we covered this, he didn't give
6 you an opportunity to review any of the pictures that
7 you took in this case?

8 A. That's correct.

9 Q. So he didn't provide you with any report
10 that correlated pictures to samples and give you any
11 opportunity to assure that it comported with your
12 recollection of your work in the case?

13 A. That's correct.

14 Q. Have you ever been on a poultry farm?

15 A. No.

16 Q. So I take it, is it correct to say that you
17 don't have any personal knowledge of the business
18 relationship and how it's conducted between a poultry
19 grower and an integrator company?

20 A. Yeah, no knowledge.

21 Q. And you don't have any personal knowledge of
22 poultry care and husbandry?

23 A. That's correct.

24 Q. You don't have any knowledge of -- do you
25 know what an animal waste management plan is?

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1 A. No.

2 Q. Do you know what poultry litter best
3 management practices are?

4 A. No.

5 Q. Do you know what poultry mortality
6 management practices are?

7 A. No.

8 Q. Do you know of any differences between
9 chicken, or raising chickens and raising turkeys?

10 A. No.

11 Q. Do you know what a brood house is?

12 A. No.

13 Q. Do you know what a grow-out house is?

14 A. No.

15 Q. Do you know the content of brood litter?

16 A. No.

17 Q. How about grow-out litter?

18 A. No.

19 Q. Do you have any understanding of the
20 differences in time required for raising chickens,
21 versus raising turkeys?

22 A. No.

23 Q. Do you have any scientific training
24 regarding the fate and transport of chemicals or
25 bacteria in the environment?

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1 A. No.

2 Q. Do you feel qualified to make any
3 observations about whether fertilizer has been applied
4 at the appropriate rate?

5 A. No.

6 Q. I'm not sure if I asked you this question
7 early on, just pardon me for asking again if that's
8 what I'm doing, how many days total do you think you
9 went into the watershed to do your work?

10 A. Maybe ten, you know, it would be all in log
11 books, I really don't recall. I mean, I didn't do it
12 a tremendous amount, but I'd say at least ten.

13 Q. Ten including the two days on the lake, on
14 the lakes?

15 A. No. Plus those.

16 Q. That might make it like 12?

17 A. Yeah, 12, something like that.

18 Q. And in the course of doing your litter work
19 and I guess, unless I ask specifically about it, let's
20 exclude the lake work; okay, from my questions.

21 In the course of doing your work, I think
22 you said sometimes you were responsible for
23 documenting and sometimes it was your partner; right?

24 A. That's correct.

25 Q. Is it fair to say that if you or your

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1 partner observed something that you were there to see
2 and charged with trying to find, that you endeavored
3 to accurately document that information on the report
4 forms?

5 A. That's correct.

6 Q. Also fair to say that you tried to be
7 complete, if you saw something, you put it on the
8 form?

9 A. That's correct.

10 Q. Did you have any process to have anybody
11 review the forms after they had been filled out in the
12 course of this assignment?

13 A. They were turned over to Steve Steele. I
14 don't know if he reviewed each one that night or not.

15 Q. Did you ever get any feedback from Major
16 Steele as to whether you needed to fix one of the
17 forms because you didn't fill something out or there
18 was something that was unclear, anything like that?

19 A. No.

20 Q. So in every instance the form that you
21 prepared on the day that you prepared it went off and
22 you didn't see it again?

23 A. That's correct.

24 Q. Were you trained on how to use the GPS
25 equipment?

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1 A. Yes.

2 Q. Have you ever used GPS equipment other than
3 in this case?

4 A. We use it in crime scene.

5 Q. In the course of your work, did the State
6 ask you to do anything to investigate how any property
7 had been used historically?

8 A. The question again, please.

9 Q. Sure. Did the State ask you to, as part of
10 your scope of work, did the State ask you to
11 investigate how any piece of property in the IRW had
12 been used historically?

13 A. No.

14 Q. Did the State ask you to investigate the
15 history of commercial fertilizer use in the IRW?

16 A. No.

17 Q. Did they ask you to investigate the history
18 of land application of poultry litter in the IRW?

19 A. No.

20 Q. Did they ask you to investigate the history
21 of land ownership in the IRW?

22 A. No.

23 Q. Other than taking pictures of a sign that
24 might be posted roadside, did you do anything to
25 assess or determine who owned any particular piece of

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1 property in the IRW?

2 A. No.

3 Q. And if there wasn't any sign, did you do
4 anything to determine who owned the property that you
5 were looking at?

6 A. No.

7 Q. Did the State ask you to do anything to
8 investigate the history of cattle production in the
9 IRW?

10 A. No.

11 Q. Did the State ask you to make any
12 observations and catalog where and how many cattle
13 there were in the IRW?

14 A. No.

15 Q. And were, meaning at the time that you were
16 out there doing your work, did you try and inventory
17 the cattle activity?

18 A. No.

19 Q. Did you see cattle?

20 A. Yes.

21 Q. See a lot of cattle?

22 MR. WOMACK: Object to form. Go ahead.

23 THE WITNESS: Some.

24 Q. (BY MR. WALKER) Did you see cattle every
25 day you went out there?

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1 A. Probably, yeah.

2 Q. Did you have any occasion -- did you follow
3 any litter trucks?

4 A. Yes.

5 Q. Did you follow any of the big trucks that
6 had litter in them?

7 A. The semis?

8 Q. Yeah.

9 A. Probably at some point in time, yeah.

10 Q. Did you follow any trucks out of the
11 watershed and tail them for a while?

12 A. Yes.

13 Q. Okay, how many times did that happen?

14 A. I only recall once.

15 Q. And how far did you go?

16 A. We probably followed it, I don't know, ten
17 or 15 miles, outside of what the boundary would have
18 been.

19 Q. And did you abandon your tail but the truck
20 kept going?

21 A. Yes.

22 Q. So you don't know where that truck
23 ultimately went?

24 A. That's correct.

25 Q. Do you have any knowledge of what the

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1 company BMPs, Inc. is?

2 A. No.

3 Q. Did you do anything to measure the grade of
4 slopes at any field that you observed?

5 A. No.

6 Q. Did you do anything to measure the
7 dimensions of any field that you observed?

8 A. No.

9 Q. Did you attempt to document any observations
10 of stream bank erosion in the IRW?

11 A. No.

12 Q. State didn't ask you to do that?

13 A. No.

14 Q. Did you have an opportunity in the course of
15 driving around the IRW to see cattle in water bodies
16 and ponds or streams?

17 A. Yes.

18 Q. Did you see horses in the IRW?

19 A. Yes.

20 Q. How about sheep or other livestock, sheep?

21 A. Yes.

22 Q. Pigs?

23 A. Didn't necessarily see pigs.

24 Q. Wild boar?

25 A. Didn't see wild boar.

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1 Q. Did the State ask you to inventory any
2 recreational water activities that were occurring in
3 the IRW?

4 A. No.

5 Q. Did the State ask you to document the
6 locations and activity of any septic systems in the
7 IRW?

8 A. No.

9 Q. Did they ask you to document commercial
10 fertilizer use in the IRW?

11 A. No.

12 Q. Based on your knowledge of the law, and I'm
13 not purporting in this question to suggest that you
14 know all the laws of the state of Oklahoma, but based
15 on your knowledge of the laws of the State of
16 Oklahoma, during the course of your investigative
17 activities did you see any violations of law?

18 A. No.

19 Q. Did you report any of the activities that
20 you saw during the course of your investigation to any
21 State agency?

22 A. No.

23 Q. Did you report any activities to law
24 enforcement?

25 A. No.

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1 Q. Is it fair to say that all of the activities
2 that you observed you reported to retired Major Steve
3 Steele?

4 A. Yes.

5 Q. Is it your understanding that Steve Steele
6 was working in his individual capacity just as you did
7 in the conduct of the investigation of this case?

8 A. Yes.

9 Q. He was not working as a representative of
10 any law enforcement agency, was he?

11 A. Not that I'm aware of.

12 Q. Is it your understanding that like you, he
13 was hired by Lithochimeia?

14 A. Yes, that's correct.

15 MR. WALKER: I think it's a good time to
16 take a break, I've got a few documents to go through
17 you, but I don't have a lot more; okay?

18 THE WITNESS: Okay.

19 VIDEOGRAPHER: We're now off the videotape
20 record, the time is 2:17 p.m.

21 (Short Break)

22 VIDEOGRAPHER: We're back now on the
23 videotape record, the time is 2:28 p.m.

24 Q. (BY MR. WALKER) Sergeant Bracken, the court
25 reporter has put in front of you what's been marked as

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1 Exhibit 2, and I've not passed this one out because
2 I've already handed it out to everybody at this table
3 at least once, if not five times.

4 But I'd like you to look at these forms and
5 it's a selection of three forms blank, or as close to
6 blank as I could find, to see if you recall what these
7 forms are. And let's just start with the first page
8 of Exhibit 2, do you recognize that form?

9 A. Yes. I believe this was the one we used in
10 the beginning when we were doing the inventory.

11 Q. Okay.

12 A. Of the places as far as which ones are good
13 barns, which ones are not good barns. And this would
14 have been something I would have filled out probably
15 on one of my first times out.

16 Q. And take a look through the form, please,
17 and I'd just like to ask you, is it your understanding
18 that the purpose of making the observations that are
19 called for on this form to determine whether a
20 particular barn is active, or inactive, or abandoned,
21 or otherwise can't be determined?

22 A. That's correct.

23 Q. So you were looking at the physical
24 condition of the structures to assess whether, as one
25 piece of information, whether they were active or not;

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1 right?

2 A. That's correct.

3 Q. And you were looking at the physical plant
4 components to determine based on the presence or
5 absence of these particular listed features whether
6 the property was actively in use; right?

7 A. That's correct.

8 Q. And the same thing for the criteria listed
9 under observed activity and other, the purpose was to
10 determine the activity or lack of activity at any
11 particular farm; right?

12 A. That's correct.

13 Q. And then at the bottom you had a place to
14 make notes of whatever additional information you
15 might observe and think was pertinent; correct?

16 A. That's correct.

17 Q. And then you had a place to log your
18 photographs, as well; right?

19 A. That's correct.

20 Q. The second page, do you recall what the
21 second page of Exhibit 2 is?

22 A. Yeah, I think this was the first generation.

23 Q. This being what, the second page?

24 A. Yeah, the second page, this one right here.

25 I think we used this one, if I remember correctly, for

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1 the actual, after kind of doing the inventory and
2 determining which barns were good and not, these were
3 the documents that we'd use for the actual, you know,
4 take pictures of the spreading and all that.

5 Q. Okay. And I'm certainly not trying to trick
6 you, but my understanding is that the third form was
7 for that purpose. Would you look at the third form in
8 Exhibit 2?

9 A. Yeah. Okay. Yeah. They're similar except
10 for the box, the box with all the check parts and
11 everything in it, so.

12 Q. And on the second page of Exhibit 2, there
13 are -- there's a listing of entries with respect to
14 the condition and the operation or lack of operation
15 of the farm; right?

16 A. That's correct.

17 Q. Which is similar to the kinds of questions
18 that were being asked on the first form; right?

19 A. Yes.

20 Q. And then the third form you would agree with
21 me, is relatively blank and is largely there to
22 document photos, location and notes?

23 A. That's correct.

24 Q. And is it your recollection that the third
25 form was used to document the litter spreading

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1 activity, that was its purpose?

2 A. Yes.

3 Q. Did you also have at any point a
4 pre-prepared logbook or notebook that you needed to
5 use?

6 A. Yes.

7 Q. And that was in addition to these forms?

8 A. Yes.

9 Q. The court reporter has marked Exhibit 3. I
10 think it's probably going to be best to go through
11 these page by page, but I'll represent to you that
12 it's a collection of all the forms that I could find
13 with your name on them that in any way mentioned a
14 Cargill poultry grower's farm or a Cargill farm; okay?

15 A. Okay.

16 Q. On the first page of Exhibit 3 can you tell
17 me whose handwriting that is?

18 A. That would be mine.

19 Q. And what date did you record for that
20 observation?

21 A. 4-21 of '05.

22 Q. And you can see in the lower right-hand
23 corner there are numbers that the lawyers have put on
24 these documents so we can identify them, in this case
25 OK-PL-0004888, do you see that?

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1 A. Yes.

2 Q. Okay. And then in sequence the next couple
3 pages are in numerical sequence, if I could ask you --
4 oh, who were you with on 4-21 of '05?

5 A. With Shane Tuell.

6 Q. And who was driving that day?

7 A. Shane would have.

8 Q. It says Shane Tuell's car, is that what
9 tells you that?

10 A. Yes.

11 Q. Do you have an independent recollection of
12 being with Shane Tuell on April 21st of 2005?

13 A. Not particularly, no.

14 Q. You're limited to the fact that it's
15 documented on this exhibit; correct?

16 A. That's correct.

17 Q. If you'd flip to the next page, it's
18 probably -- well, it was a post it or something that
19 got independently photocopied. Do you know what that
20 is?

21 A. No.

22 Q. It will forever be unknown because I don't
23 know what it is either.

24 The next page and if you'd look, just to
25 confirm for yourself, the very first page of Exhibit 3

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1 starts with waypoint number five, do you see that?

2 A. Yes.

3 Q. And then after you skip the post it page you
4 get to page 4890, which has waypoint six; right?

5 A. That's correct.

6 Q. And so can you confirm by the appearance of
7 this exhibit that that's just a continuation of your
8 observations on April 21st of 2005?

9 A. Yes.

10 Q. The entry for waypoint six you wrote that
11 you observed a spreader in the field; right?

12 A. Correct.

13 Q. And that you followed an empty spreader to
14 waypoint seven; right?

15 A. Yes.

16 Q. And then the next entry is for waypoint
17 search; correct?

18 A. That's correct.

19 Q. So there was an empty spreader that went
20 from waypoint six to waypoint seven, which is the D.
21 E. Rucker farm; right?

22 A. That's correct.

23 Q. That's at least what the sign said, I guess,
24 huh?

25 A. Yes, that would have been where we got that

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1 information.

2 Q. And the entry at waypoint seven says the
3 spreader returned to this farm after dumping in the
4 field, dumping in the field, meaning spreading litter
5 at waypoint six?

6 A. Yes.

7 Q. And you use the word dumping, I just want to
8 be sure, are you talking about spreading, or are you
9 talking -- is that what you're talking about?

10 A. Yes, spreading, yes.

11 Q. Did you mean to, you know, impugn anybody by
12 the use of the word dumping instead of spreading?

13 A. No.

14 Q. In this series of observations between
15 waypoint six and waypoint seven, fair to say that you
16 didn't document any observation of litter being loaded
17 into that spreader; correct?

18 A. That's correct.

19 Q. And you didn't note any litter piles or
20 anything like that at the Rucker farm; right?

21 A. That's correct.

22 Q. And as you sit here today, do you have any
23 independent recollection aside from what is documented
24 on the form, of the condition of the Rucker farm that
25 day?

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1 A. No.

2 Q. Fair to say that whatever litter was being
3 applied at waypoint six, you don't know where that
4 litter came from?

5 A. That's correct.

6 Q. If we could turn to the next page of Exhibit
7 3, page 1210, do you see that?

8 A. Yes.

9 Q. Is your name on that, as well?

10 A. It is.

11 Q. Your handwriting?

12 A. Yes.

13 Q. What was the date of the observation?

14 A. 7-7 of 2005.

15 Q. And you went to the Edwards farms that day?

16 A. Yes.

17 Q. And you didn't make any notation of any
18 litter piles or litter spreading at that farm?

19 A. No, there are no notations.

20 Q. And had you seen that activity, that was
21 what you were looking for, you would have noted it;
22 right?

23 A. That's correct.

24 Q. In fact, there's also a check the box
25 location for new or used litter on ground on this

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1 form; correct?

2 A. That's correct.

3 Q. And you didn't see any new or used litter on
4 the ground at that farm?

5 A. That's correct.

6 Q. The next page 1506, was also taken on July
7 7th, 2005; right?

8 A. Yes.

9 Q. And you were with Mr. Tuell; correct?

10 A. That's correct.

11 Q. And this is your handwriting?

12 A. That's correct.

13 Q. Sergeant Bracken, did you see any stacked
14 used litter or cake, or stacked new litter at the Joua
15 farm that day?

16 A. No.

17 Q. You noted that it was absent; correct?

18 A. That's correct.

19 Q. If you'd turn -- well, I'm out of pages.
20 I'm going to have to go another exhibit. The court
21 reporter has marked another collection of documents I
22 put together in Exhibit 4. Do you see that?

23 A. Yes.

24 Q. Is that your handwriting on the first page
25 of Exhibit 4?

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1 A. Yes.

2 Q. And who were you making observations with on
3 that particular day?

4 A. Darren Froemming.

5 Q. And what date was that?

6 A. 4-13 of '05.

7 Q. The initial observation in Exhibit 3 was
8 April 21st of '05, do you remember that?

9 A. Yes.

10 Q. And so this was about a week earlier;
11 correct?

12 A. Yes.

13 Q. Do you know, was this the first day that you
14 were out in the field to make observations in this
15 assignment?

16 A. I couldn't tell you that.

17 Q. Okay. Would you agree that it was at least
18 at the beginning of the period of time that you were
19 doing your work in the field on this case?

20 A. Yes.

21 Q. As you went from waypoint to waypoint and
22 you were making observations and noting them on the
23 form and then driving to the next location, about how
24 long did it take you for each waypoint?

25 A. During the -- this was the inventory phase

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1 so it didn't take us very long to identify each one,
2 maybe 15, 20 minutes at each location.

3 Q. Okay. 15, 20, I guess, is the longest
4 period of time that it took just to drive from one to
5 another?

6 A. Yes.

7 Q. And then how long would you typically spend
8 at a location?

9 A. During the inventory phase like this, like I
10 said, probably ten, 15, 20 minutes, somewhere around
11 in there.

12 Q. And at the beginning of Exhibit 4 you were
13 noting some times; right, 600 hours you met at the
14 Uniform Division East; right?

15 A. Yes.

16 Q. And then at 7:24 in the morning you were at
17 waypoint 15; correct?

18 A. That's correct.

19 Q. And then you stop making notations of the
20 time here for a while. And I'm just trying to figure
21 out about what time a particular observation might
22 have occurred.

23 If you go to waypoint 32, is that also your
24 handwriting, it's on page 4870?

25 A. Yes.

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1 Q. And you wrote down that you were at the
2 breeder farm number six location; correct?

3 A. Yes.

4 Q. And you would have gotten that off of a
5 sign; right?

6 A. Yes.

7 Q. And it says, Video of full spreader stuck in
8 the field, do you see that?

9 A. Yes.

10 Q. Okay. And you wrote that?

11 A. Yes.

12 Q. Do you recall taking the video of a truck
13 that was stuck in a field?

14 A. I do not.

15 Q. Do you recall seeing a truck stuck in the
16 field at any time?

17 A. No, no.

18 Q. So you don't recall seeing this truck
19 independent of whatever's written down here?

20 A. That's correct.

21 Q. Do you know how long you remained at that
22 location to observe that truck?

23 A. No.

24 Q. Do you recall any specific facts about the
25 circumstance of that truck that would lead you to

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1 conclude that it was stuck?

2 A. No, not by recollection, but I put it that
3 way, so I'm sure there was a reason. If I saw the
4 photos or the video, but.

5 Q. Then you went on from waypoint 32 to
6 waypoint 33 and 34, 35, and at waypoint 35, on page
7 4872, you noted that you had followed a truck to
8 waypoint 36 at 1140 hours; correct?

9 A. Yes.

10 Q. It's kind of in the middle of the page
11 there, you see it?

12 A. Uh-huh.

13 Q. Okay. And my question is, as best you can
14 estimate, can you tell me what time you were at
15 waypoint 32 based on that information and this couple
16 of pages of records?

17 A. The only thing I would be able to tell you
18 starting at 724 till that time, somewhere between that
19 time.

20 Q. Sometime between then?

21 A. Yeah.

22 Q. The fact that you had estimated that you
23 spent about 15 minutes or so at each location doesn't
24 help you try and estimate?

25 A. No, because there would be driving time

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1 between, I don't remember distances. If a photo was
2 taken, the information will be on the photo of the
3 time probably, through that metadata we talked about.

4 Q. Okay. Back to waypoint 32 on 4870, it says
5 there photo 193, you see that?

6 A. Yes.

7 Q. Okay. And I'll represent to you that we did
8 our very best and believe we have identified which
9 photo that is from the State's production. And I'll
10 ask you to turn to the last page of Exhibit 4, and
11 take a look at that photo.

12 Do you see any full spreader truck stuck in
13 the field?

14 A. No.

15 Q. Is that the photo that you attribute to that
16 observation?

17 A. I don't know without the numbers comparison.

18 Q. Let me ask the question a different way and
19 I guess you're going to have to assume that my
20 assistant has properly associated the photo with the
21 observation --

22 MR. WOMACK: I'm going do object to that. I
23 don't know if he can really make that assumption.

24 MR. WALKER: Well, it's your production and
25 we've done the best we can because you didn't produce

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1 them with the photo numbers on them.

2 We've endeavored to try and make that match;
3 okay? So we've done it. And I think we've done a
4 darn good job of it. And I'm asking the witness to
5 assume that this is the picture that's photo 193.

6 Q. (BY MR. WALKER) But really what my question
7 is, is whether photo 193 is the photo that you took to
8 record the observation that you made at waypoint 32
9 that day?

10 A. It could be, if you've matched them up.

11 Q. Well, what I'm asking you is, is photo 193,
12 the photo, whatever it is?

13 A. Right.

14 Q. It's photo 193?

15 A. Right, okay.

16 Q. And you took that photo to document what you
17 were seeing at breeder farm number six that day;
18 correct?

19 A. Yes.

20 Q. That's all I'm asking.

21 A. There's also a video, it says video.

22 Q. I see that and I'll represent to you that we
23 haven't been able to locate that video.

24 A. Okay.

25 Q. I wish I had it. I don't. Okay. But I

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1 have been given photos and all I want to know, just to
2 be clear, is that you took photo 193; correct?

3 A. That is correct.

4 Q. And you took that photo for the purpose of
5 documenting what you observed at breeder farm number
6 six, on April 13th, 2005?

7 A. That's correct.

8 Q. The court reporter has marked Exhibit 5,
9 which is a report that was prepared by Mr. Steele and
10 Mr. Stansill; okay?

11 A. Uh-huh.

12 Q. And the reason I was asking about the time
13 of your observation is because of this observation on
14 April 13th of 2005, by that team; okay?

15 A. Okay.

16 Q. And there is a notation by the Steele
17 Stansill team at 11:30 in the morning on the same day
18 that you had reported a stuck truck in the field at
19 the same breeder farm six location, you see that?

20 A. Uh-huh.

21 Q. Now I'll just ask you if you'd turn to the
22 next page there's a picture, is that a litter
23 spreading truck?

24 A. Yes.

25 Q. A litter spreading truck at breeder farm

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1 six, can you see that in the sign?

2 A. Yes.

3 Q. And does that litter truck appear to you to
4 be stuck?

5 A. No.

6 Q. And I'll just ask you to turn to the next
7 page just so you can probably get a better look at the
8 sign, that's saying breeder farm six, do you see that?

9 A. Yes.

10 Q. Okay. And you can see on the right edge of
11 the picture a little dusting. I don't know if you can
12 tell me what that is or not, can you?

13 A. It looks like a dust plume.

14 Q. Coming off the back of a litter truck;
15 right?

16 A. Right.

17 Q. In fact would you agree in the previous
18 photo that truck is moving and it's spreading litter?

19 A. Yes.

20 Q. Sergeant Bracken, I don't have any further
21 questions for you. I do appreciate your time. The
22 other lawyers at the table may have some, though.

23 CROSS EXAMINATION

24 BY MR. MIRKES:

25 Q. Hello, sir, my name the Craig Mirkes, I

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1 represent Peterson Farms, we met earlier. I've just
2 got a few questions. I am going to direct you back
3 to.

4 A. Okay.

5 Q. Tell me what exhibit number that is?

6 A. 4.

7 Q. Okay. Exhibit 4. And rather than hand you
8 another picture, I have copies that's similar to that,
9 and I'm going to hand you pages that came later in
10 that same packet of information, does that make sense
11 the way I described that?

12 A. Yes.

13 Q. What we didn't do is copy the entire
14 notebook, if you will. I'll go ahead and apologize to
15 counsel one more time that they do not get color
16 photographs, they have to look at black and whites,
17 but the witness does have color photographs. If
18 you'll take a minute just to flip through that for me.

19 While you're doing so, I'll represent for
20 your benefit and for the benefit of the State that we,
21 too, have endeavored to match up the photographs the
22 best we can based upon the production as they were
23 provided to us.

24 If either counsel for the State or yourself
25 sees a problem or an error with what we've done, we'd

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1 appreciate that you point that out. Are you ready?

2 A. Oh, yeah. Go ahead.

3 Q. Does this appear to be your handwriting
4 looking at page 1?

5 A. Yes.

6 Q. Okay. And I will represent to you that the
7 pictures associated with this are waypoint 56, it's
8 number 17 there.

9 A. Okay.

10 Q. And this is the Bush Valley farm, which is a
11 Peterson contract grower farm. If you will, sir,
12 please flip to page or what's designated as frames 230
13 and 231.

14 A. Okay.

15 Q. What do those photos depict?

16 A. It depicts a pile of debris.

17 Q. Can you identify what that debris is?

18 A. No.

19 Q. Let's go back to page 1. Will you read for
20 me what you've written there under waypoint 56.

21 A. "Four barns with covered shed and chicken
22 waste, piles in field".

23 Q. Is your -- well, you can just tell me, what
24 you were trying to describe there as chicken waste,
25 what you have, is what's reflected in frames 230, and

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1 231?

2 A. No.

3 Q. So they were?

4 A. The way I read that is I just noted there
5 was piles in the field. There was chicken waste
6 covered and then some piles in the field that I can't
7 identify.

8 Q. Understood. That makes much more sense. So
9 let's flip to frame 228, if you will.

10 A. Yes.

11 Q. What is that a picture of?

12 A. That's a picture of what's believed to be
13 piles of possible chicken waste covered in a shed.

14 Q. Any samples taken of any of that material?

15 A. No.

16 Q. Either the covered material or what you've
17 identified in the field?

18 A. No.

19 Q. Okay. Anything based upon your
20 understanding and knowledge of the law, any violations
21 of law depicted in any of these photographs?

22 A. No.

23 Q. I'll now hand you what's being marked as
24 Exhibit 8. After you've had a chance to kind of look
25 over that, just let me know.

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1 A. Okay.

2 Q. Okay. And I kind of want to handle this one
3 in two parts. Is this your handwriting, first of all?

4 A. Yes.

5 Q. Okay. And this is an observation that you
6 made of the Waymon Rhodes's farm; is that correct?

7 A. Yes.

8 Q. And Waymon Rhodes is a Peterson Farms
9 grower. Looking at the photographs, your
10 observation -- tell me what your photographs are
11 observing here?

12 A. Picture of the sign, the Waymon Rhodes sign,
13 a picture of a loader, loading material on to a truck.

14 Q. Okay. And just to be clear, that's
15 OK-PL-0010853; is that correct?

16 A. Yes.

17 Q. Okay.

18 A. The next one, which would be 54, shows a
19 truck full of a material. And 55 shows a spreader,
20 unknown if it's full or not full, and some piles off
21 of debris.

22 Q. So based on your own descriptions as you
23 just gave them, it's really unknown what's being
24 loaded in those trucks?

25 A. That's correct.

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1 Q. Okay. Well, based upon that and based upon
2 your understanding of knowledge of the law, is there
3 any violations of laws depicted in any of those
4 photographs?

5 A. No.

6 Q. And then there's a description here of a
7 confrontation, did you read that?

8 A. Yes.

9 Q. Do you remember that confrontation?

10 A. Yes, it was the only one I had the whole
11 time of any sort.

12 Q. Will you tell us a little bit about that?

13 A. Well, it's written this way and I actually
14 remember it. Like I said, this was the only one I
15 had, which was good.

16 But this one we just, we just were following
17 this truck and, you know, by this time as you probably
18 know, they knew we were out there, and we could start
19 to see that starting to take place.

20 And probably someone radioed that we were
21 following the truck and when we passed the farm and
22 turned around to come back, I remember clearly because
23 the guy could have been killed.

24 I mean, we we're on a highway, I mean, it's
25 a two lane highway but it's a highway, and he jumps

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1 out in front of the car to try to stop us.

2 And you know, like I said, we're trained --
3 we're not to get in confrontations. We're not to get
4 in arguments with anybody, so we went around him and
5 went up the hill and pulled over and parked there.

6 So then he realized when we stopped, he
7 jumped in the car, and it was quite clear that he
8 wanted to get into a confrontation and we just weren't
9 going to do that, so we just left the area.

10 Q. Why do you think he was so angry?

11 A. Probably because we were following him, I'm
12 sure. Because, like I said, by that time they knew
13 what we were doing out there, so.

14 Q. Think they had reason to be angry?

15 MR. WOMACK: Object to the form.

16 THE WITNESS: I can't answer that.

17 Q. (BY MR. MIRKES) Would you be angry if
18 someone was following you and videotaping what you
19 were doing?

20 A. Well, in my job I get videotaped a lot
21 unfortunately, being in the police work, so I'm used
22 to it.

23 Q. In your private life are you videotaped a
24 lot at home?

25 A. No.

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1 Q. Would that anger you if that was happening?

2 A. If I'm not doing anything wrong.

3 Q. Were these people doing anything wrong?

4 A. I don't know.

5 Q. Did you report any of them to law

6 enforcement?

7 A. No.

8 Q. The first meeting that you attended for this
9 job, we've talked about that meeting a little bit, do
10 you remember that?

11 A. Yes.

12 Q. Do you remember if Elizabeth Weatherly was
13 at that meeting?

14 A. I can't remember.

15 Q. Do you know who Elizabeth Weatherly is?

16 A. Yes.

17 Q. Do you know if she worked on this
18 investigation?

19 A. Oh, yes.

20 Q. When we were discussing the testing that was
21 performed on Tenkiller and Broken Bow, you were in
22 charge of photographing that testing and there were
23 several references of videotaping and you weren't
24 doing any videotaping, but was anyone else videotaping
25 that?

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1 A. No.

2 Q. Were you ever specifically instructed not to
3 take a picture of something?

4 A. No.

5 Q. And it was Burt Fisher who was giving you
6 the instruction when to take pictures?

7 A. Yes.

8 Q. As you know, we've taken a lot of
9 depositions in the last three days of every
10 investigator who's worked on this case, have you
11 talked to any of those people in the last 72 hours?

12 A. No.

13 Q. At all?

14 A. I've talked to Darren Froemming, not about
15 this, though. He was in my squad. I saw him last
16 night.

17 Q. He didn't say how nice we were?

18 A. He actually said you were nice.

19 Q. As you sit here today, do you recall seeing
20 Peterson contract grower farms when you were in the
21 watershed?

22 A. If it's documented that way, I don't
23 remember any particular farms or not farms.

24 Q. So as you sit here today, there's nothing
25 that sticks out in your mind about a Peterson contract

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1 grower farm?

2 A. No.

3 MR. MIRKES: I believe that's all the
4 questions I have for you today. I appreciate your
5 time. And I will pass the witness.

6 MR. CHADICK: I don't have any questions.

7 MR. WOMACK: I've got just a few.

8 CROSS EXAMINATION

9 BY MR. WOMACK:

10 Q. Sergeant Bracken, you might remember earlier
11 you and Mr. Walker had a conversation regarding the
12 gathering of evidence in your normal course of work as
13 a police officer. I believe you testified you usually
14 do more than take pictures and you actually gather
15 physical evidence, do you remember that testimony?

16 A. Yes.

17 Q. Okay. Would it be fair for me to assume,
18 you know, perhaps those criminal investigations you've
19 taken blood samples found at a crime scene?

20 MR. WALKER: Object to the form.

21 THE WITNESS: Yes.

22 Q. (BY MR. WOMACK) Would it be fair to assume
23 that at those crime scenes maybe you've gathered
24 discharged shells of bullet shells?

25 A. Yes.

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1 Q. Okay. When you gather -- let's say when you
2 gather blood at a crime scene, do you analyze that?
3 Do you then go back yourself and analyze that blood
4 sample?

5 A. No.

6 Q. Who would do that?

7 A. Our lab.

8 Q. Okay. I take it then that your lab, once
9 they analyze the blood sample, they make conclusions
10 based on their analysis?

11 A. That's correct.

12 Q. Do they come back to you and have you, I
13 guess, kind of double check their analysis to make
14 sure it conforms with the blood samples you brought
15 back with them, back to them?

16 A. No.

17 Q. Okay. Now if you were to gather let's say a
18 shotgun shell, scratch that.

19 You know, a casing from a pistol, or bullet
20 from a pistol, do you take that back and analyze it
21 yourself?

22 A. No.

23 Q. Who analyzes that?

24 A. The lab.

25 Q. Do they make conclusions based on the

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1 evidence you provide them?

2 A. Yes.

3 Q. Do they, once they made their conclusions,
4 do they run their conclusions by you to make sure it
5 conforms with the evidence you brought them?

6 A. No.

7 Q. Okay. Another thing I wanted to kind of
8 make clear here, you've been asked a couple times I
9 believe about violation of laws, the law as you know
10 it and I think it is safe to assume that as a police
11 officer you do know some, a lot of if criminal laws of
12 the State of the Oklahoma, but probably not all of the
13 laws for the State of Oklahoma?

14 A. That's correct.

15 MR. MIRKES: Object to form.

16 Q. (BY MR. WOMACK) Do you have any specific
17 knowledge of agricultural or environmental laws?

18 A. No.

19 Q. If during the course of your investigation
20 related to this lawsuit, if you were to have observed
21 a violation of an environmental law or an agricultural
22 law, would you have been able to identify it as a
23 violation of law?

24 A. Yes.

25 Q. You would have been able to identify a

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1 violation of environmental law?

2 A. If I knew the law.

3 Q. If you knew the law; okay.

4 A. Yeah.

5 Q. But if you did not know the law?

6 A. No, of course not. I'm sorry I thought you
7 said if I knew the law.

8 Q. No, no, no, I'm going on what you do know.

9 A. Okay.

10 Q. Lastly, the observations, the results of
11 your observations that you submitted to Lithochimeia,
12 was it your understanding that Lithochimeia had been
13 hired by the State of Oklahoma in this lawsuit to
14 perform certain analyses?

15 A. Yes.

16 Q. Okay. Specifically were they performing the
17 work that they did on behalf of the Attorney General?

18 A. I guess, yeah.

19 Q. Okay. Is your understanding that the
20 Attorney General's the highest ranking law enforcement
21 officer of the State?

22 A. Yes.

23 Q. Okay.

24 MR. WOMACK: That's all I have. I
25 appreciate your time, sir.

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1 MR. WALKER: I have a couple follow-ups.

2 THE WITNESS: Yes.

3 REDIRECT EXAMINATION

4 BY MR. WALKER:

5 Q. In the course of your police work if you're
6 prosecuting a crime and gather evidence, do you give
7 that evidence to a third party like you did to
8 Lithochimeia in this case?

9 A. No.

10 Q. That evidence stays within the police force;
11 right?

12 A. Yes.

13 Q. That evidence stays within the custody of
14 law enforcement; right?

15 A. Yes.

16 Q. Is Lithochimeia part of the law enforcement
17 arm of this state, as far as you know?

18 A. No.

19 Q. They're not, are they?

20 A. No.

21 Q. Counsel was asking you questions about the
22 fact that you don't test samples in the course of your
23 forensic work; right?

24 A. That's correct.

25 Q. But you do gather samples; right?

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1 A. That's correct.

2 Q. You gather the evidence and you give it to
3 the lab to do test; right?

4 A. That's correct.

5 Q. And in fact, they give you the results back?

6 A. That's correct.

7 Q. Because you're conducting the investigation
8 and you need to know what the results are and so you
9 do get a chance to see what the lab concluded; right?

10 A. That's correct.

11 Q. You didn't get -- you didn't collect any
12 samples in this case; correct?

13 A. That's correct.

14 Q. And you didn't get any information back in
15 response to the information that you provided to
16 Lithochimeia; right?

17 A. That's correct.

18 MR. WALKER: I don't have any further
19 questions. I'll just -- do you have any follow-up on
20 that?

21 MR. WOMACK: No.

22 MR. WALKER: Okay. I don't have any further
23 questions. I guess nobody has any further questions;
24 right?

25 You have the right to review your

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1 transcript, the transcript of this deposition and make
2 corrections and sign it, or you can waive that and the
3 court reporter will just produce it and we'll use it
4 the way it is.

5 Do you want to read and sign, or do you want
6 to waive?

7 THE WITNESS: No, I'll waive.

8 MR. WALKER: We're done.

9 VIDEOGRAPHER: We're now off the videotape
10 record, the time is 3:08 p.m.

11 (TOTAL TIME ON RECORD 1hr54mins16secs)

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1 CERTIFICATE

2
3 I, SUSAN K. McGUIRE, Certified Shorthand
4 Reporter, do hereby certify that the above-named TIM
5 BRACKEN was by me first duly sworn to testify the truth,
6 the whole truth, and nothing but the truth, in the case
7 aforesaid; that the above and foregoing deposition was
8 by me taken in shorthand and thereafter transcribed;
9 that the same was taken the 10th day of April, 2009,
10 in the City of Tulsa, County of Tulsa, State of
11 Oklahoma, pursuant to subpoena, and under the
12 stipulations hereinbefore set out; and that I am not
13 an attorney for nor relative of any of said parties or
14 otherwise interested in the event of said action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and official seal this 17th day of April, 2009.
17
18
19
20
21

22 _____
23 SUSAN K. McGUIRE, CSR, RPR

24 State of Oklahoma, No. 1594
25